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KEUSEY, TUTUNJIAN & BITETTO, P.C.
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In re Application of	:	DECISION
LOSIO et al.	:	
Application No.: 10/598,859	:	
PCT No.: PCT/IB2005/000656	:	
Int. Filing Date: 15 March 2005	:	
Priority Date: 15 March 2004	:	
Attorney Docket No.: 048826/315332	:	
For: COMPOSITE FOOTWEAR INSOLE,	:	
AND METHOD OF MANUFACTURING	:	
SAME	:	

This decision is in response to applicants' renewed petition under 37 CFR 1.497(d) filed 14 May 2009.

BACKGROUND

On 15 March 2005, applicant filed international application PCT/IB2005/000656, which designated the United States and claimed a priority date of 15 March 2004. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 29 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 15 September 2006.

On 13 September 2006, applicant filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 17 June 2008, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that a declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 05 August 2008, applicant filed a petition under 37 CFR 1.497(d) which was accompanied by, *inter alia*, a statement from Ireneo Braghin and an English translation thereof.

On 20 November 2008, a decision was mailed dismissing without prejudice applicants' petition under 37 CFR 1.497(d). Specifically, it was noted that the statement of Ireneo Braghin (English translation) did not state that any error in inventorship in the international application occurred with deceptive intention on his part, that no mention was made in the petition regarding whether an assignment had been executed, that if an assignment had been executed, the written consent of the assignee was required, and that a proper showing under 37 CFR 3.73(b) was required if an assignment has been executed. The decision also noted that the declaration of inventors filed 05 August 2008 was not in compliance with 37 CFR 1.497(a)-(b) because the filing date indicated for the executed specification was incorrect.

On 14 May 2009, applicants filed the instant renewed petition under 37 CFR 1.497(d) which was accompanied by, *inter alia*, a petition/fee for a four-month extension of time, a new declaration of the inventor, a statement from Ireneo Braghin, and a consent of assignee statement.

DISCUSSION

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92^{bis} subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in Sec. 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

As noted in the decision mailed 20 November 2008, item (2) has been satisfied and item (4) is not required.

Item (1) has now been satisfied.

Item (3) has not been satisfied. Although a consent of assignee statement has been provided, a proper showing under 37 CFR 3.73(b) has not. Such a showing is required if an assignment has been executed. See MPEP § 324. (Although the consent of assignee statement indicates that "a copy of the assignment is enclosed herewith," no such copy appears in the application file.)

CONCLUSION

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper reply will result in abandonment of the application.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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